



PUBLIC NOTICE

Federal Communications Commission
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DA 08-1027

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**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST BY
PROGENY LMS, LLC FOR WAIVER OF LOCATION AND MONITORING SERVICE (LMS)
CONSTRUCTION RULE**

WT Docket No. 08-60

Comment Date: June 4, 2008

Reply Comment Date: June 19, 2008

On May 1, 2008, Progeny LMS, LLC (Progeny) filed a request for waiver of the Commission's Multilateration Location and Monitoring Service (M-LMS) construction rule.¹ Progeny holds a total of 228 M-LMS Economic Area (EA) licenses in the 902-928 MHz band, all of which have a five-year construction deadline of July 19, 2008² and a ten-year construction deadline and expiration date of July 19, 2010. Under Section 90.155(d) of the Commission's rules, M-LMS licensees are required to construct and place into operation a sufficient number of base stations to provide service to one-third of the population of their EA within five years of initial license grant and two-thirds of the population of their EA within ten years of license grant. Alternatively, an M-LMS licensee may make a showing of substantial service in their license area at the five-year and ten-year benchmarks.³ Progeny requests an additional four-year extension of its five-year construction requirement until July 19, 2012 and a four-year extension of its ten-year construction requirement until July 19, 2014.⁴ The Wireless Telecommunications Bureau seeks comment on Progeny's request.

In support of its waiver request, Progeny argues that the lack of M-LMS equipment has prevented it from meeting its construction requirements.⁵ Progeny states that the Commission has granted multiple

¹ See Request of Progeny LMS, LLC For Waiver and Limited Extension of Time, filed May 1, 2008 (Waiver Request), Universal Licensing System applications 0003422772 – 0003422999 inclusive and 0003423004 - 0003423231 inclusive. For convenience, ULS File No. 0003422772 has been designated as the lead application.

² The original five-year construction deadline for these licenses was July 19, 2005, but Progeny was granted a three-year extension of that deadline. See Request of Progeny LMS, LLC for a Three-Year Extension of the Five-Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses, *Memorandum Opinion and Order*, DA 06-1094, (WTB, MD 2006).

³ 47 C.F.R. § 90.155(d).

⁴ See Waiver Request at 1.

⁵ *Id* at 5.

extension of time requests to other M-LMS licensees due to the lack of M-LMS equipment. Progeny also stated that, because compliance with the construction deadline is impossible, the imposition of the deadline is inequitable and unduly burdensome.⁶ Progeny contends it has been committed to providing M-LMS services as evidenced by its discussions with the Department of Homeland Security regarding location services, its efforts to procure equipment, its funding of research on possible uses of the M-LMS band, and its active participation in the Commission's proceeding to revise the M-LMS rules.⁷ Progeny states that a four year extension is needed because it must design, develop and deploy its own equipment to provide M-LMS service. Progeny points out that the extension would go beyond its license renewal date, but states that the Commission may condition renewal of licenses on subsequent compliance with its construction requirements.⁸

GENERAL INFORMATION

Comments must be filed no later than **June 4, 2008**, and reply comments must be filed no later than **June 19, 2008**. All filings should reference **WT Docket No. 08-60**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/cgb/ecfs/>, (2) the Federal Government's eRulemaking Portal: <http://www.regulations.gov>, or (3) paper copies.⁹

- **ECFS Filers:** If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full names, U.S. Postal Service mailing addresses, and the applicable docket or rulemaking number. Interested parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.
- **eRulemaking Filers:** Filers should follow the instructions provided on the website for submitting comments.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

⁶ *Id* at 9.

⁷ *Id* at 4, 12.

⁸ *Id* at 12-13.

⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

Copies of this public notice, and the waiver request noted herein, will be posted on the web at http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi and will be available for public inspection and duplication during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the comments and other filings in this docket also may be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc. in person at 445 12th Street, SW, Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300 or (800) 378-3160, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This proceeding is designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹¹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.¹²

For further information, contact James Brown, Mobility Division, Wireless Telecommunications Bureau at (717) 338-2621, or via email at james.brown@fcc.gov.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

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¹⁰ 47 C.F.R. §§ 1.1200(a), 1.1206. Requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules. 47 C.F.R. § 1.1208. However, because of the policy implications and potential impact of this proceeding on persons not parties to the waiver requests, we find it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See 47 C.F.R. §§ 1.1200(a), 1.1206.

¹¹ 47 C.F.R. § 1.1206(b).

¹² *Id.*